beneficiary and the testator's next of kin might get together and free the fund of the incubus of supporting the monument, he might direct that if the monument should fall into decay, then from such time as it should be put in repair until it should again fall into decay the fund should be devoted to some other public charity named, thereby furnishing the inducement to the friends of the other charity to see that the tomb was repaired. In this way a chain of charities might be set up, each as a watch-dog upon the preceding, to see that the wishes of the testator, however whimsical, should be observed to the letter. This would seem to be clear and easy. *Christ's Hospital* v. *Grainger*, 1 Macn. & G. 460; *In re Tyler* (1891), 3 Ch. 252. It has even been held (strangely enough) that the residue thus created could be given over to a private beneficiary on such a remote contingency. *In re Randell*, 38 Ch. D. 213, 58 L. T. 626, 57 L. J. Ch. 899, 36 W. R. 543; *In re Blunt's Trusts*, [1904], 2 Ch. 767.

What has been said of perpetuities to preserve tombs, could as well be applied to establish any other perpetuity. Why not give the whole estate to trustees to pay the income to the Home for Superannuated Ministers for such time only as some good hearted soul should, out of his own purse, provide board, lodging, medical attendance, clothes and $50 per day as pin-money to each of testator's descendants, and then to some other charity? This is no attempt to tie up any part of testator's estate in any private perpetuity. Indeed, no part of his estate could lawfully be devoted to anything but the public charity. It is merely creating indirectly an inducement to the rest of mankind to do it "for the love of charity."

Since the law of perpetuities applies only to property and not to contracts (*Woodall* v. *Clifton*, [1905], 2 Ch. 257), would it not be safer for persons desiring to accomplish such purposes to abandon their attempts to do it by means of a will, and instead make a contract with some substantial trust company to make specified payments through all the ages to come. It is now pretty well agreed that one for whose benefit a contract is made can sue on it, though he was not a party to it. Furthermore on this subject see articles by Prof. A. M. KALES in 5 ILL. L. REV. 47, 251. J. R. R.

POWER OF THE BENEFICIARY TO TERMINATE A SPENDTHRIFT TRUST FOR A STATED TIME.—The question as to whether the beneficiary of a spendthrift trust for a stated time can, upon reaching his majority, compel the trustee to put him in possession of the trust fund has been passed upon by the Supreme Court of the United States for the first time in the recent case of *Shelton* v. *King*, (1913), 33 Sup. Ct. 686.

A testatrix made three minor relatives the beneficiaries of a fund of $75,000, of which they were to receive the income until the youngest of them had attained the age of twenty-five years, when they were to receive the fund absolutely. The oldest is now past twenty-one years and all three joined in a bill to have the trust terminated and the legacies paid to them absolutely. The court in deciding the case followed the present trend of the American state courts, and in direct contrast with the courts of England upheld the

trust and denied the petition of the plaintiff, declaring that no rule of public policy or law was violated by such a trust and that in such case the desire of the testator must be carried out.

In the opinion, which was written by Justice LURTON, it was held that no rule of law or principle of public policy was violated by a postponement of the passing of the legal estate to the legatees; no rights of creditors were involved, and no circumstances had arisen, not provided for by the testatrix in her will, hence when the disposition of the property directed by the testatrix contravenes no rule of law or public policy it is the duty of the court to uphold the trust. In support of its reasoning and conclusions the court cited *Claflin* v. *Claflin,* 149 Mass. 19, 14 Am. St. Rep. 393, 3 L. R. A. 370, 20 N. E. 454; *Nichols* v. *Eaton,* 91 U. S. 716, 23 L. Ed. 254, and *Broadway National Bank* v. *Adams,* 133 Mass. 170, 43 Am. Rep. 504, with others, and seems to rely most strongly on the rule as laid down in these three cases. Of the three the first is the only one which seems exactly in point, and the rule as laid down in it is followed exactly in the principal case. In it the testator gave $30,000 to a trustee in trust for his son; $10,000 was to be paid the beneficiary at the age of twenty-one, $10,000 at the age of twenty-five and $10,000 when he was thirty. Shortly after receiving the first payment the beneficiary sued to get the whole amount. It was held that he could not have it and the trust was held to contravene no public policy or rule of law and it was therefore the duty of the court to carry out the will of the testator. The other two cases involve the same general principle but are not exactly in point. In *Nichols* v. *Eaton* the assignee in bankruptcy of the beneficiary was suing to get the fund, and the trust had been established in such terms that the estate of the beneficiary ended when he became a bankrupt. The decision of the court on the question involved in the principal case was uncalled for in *Nichols* v. *Eaton* as it was unnecessary to a decision of the case, consequently Justice MILLER'S discussion of the validity of a proviso in a will postponing the possession of the legatee is worth only the consideration which dictum from so eminent a jurist commands. It is, however, the clearest statement of the theory of the American courts in regard to such trusts, in any decision heretofore rendered.

Broadway National Bank v. *Adams* was also an action brought by a creditor of the beneficiary to subject the trust funds to the payment of his debts, but the court held that a testator could make what disposition he liked of his property in order to provide for those in whose welfare he had an interest, and the law would enforce whatever provision he made provided it contravened no rule of law or public policy and that such a trust did neither.

The English courts lay down the rule that when a trust is created to pay the rents and profits or income of either real or personal property to the beneficiary for a fixed time and then to convey it absolutely to the beneficiary, the latter may elect to take it immediately upon coming of age, or upon attaining the capacity to execute a valid discharge to the trustee, and can compel the trustee to convey the legal estate to him. *Saunders* v. *Vautier,* 18 Eng. Ch. 240, Cr. & Ph. 240; *Josselyn* v. *Josselyn,* 9 Sim. 63; and *Wharton* v. *Masterman,* [1895] A. C. 186.

These English cases cited as authority on this point give no very satisfactory reasons for holding such a trust void. Professor GRAY suggests (RESTRAINTS ON THE ALIENATION OF PROPERTY, § 256), in support of the English rule that freedom of alienation is as much an incident of equitable as of legal estates: that when trusts of this character were first developed, equity, following the law, stepped in and prevented the restriction by compelling the trustee to convey the legal estate to the beneficiary. Further when a man owns property and receives its benefits, public policy requires that it should be subject to his debts and liable to the satisfaction of his obligations. Any contrary rule encourages fraud and allows the beneficiary to contract debts with no liability to answer for them out of the trust estate.

On the other hand it is insisted in support of the American doctrine, in KALES, FUTURE INTERESTS, §§ 288-296, and in the decisions of the American courts above cited, that the trust is not a dry trust but is active, and the care of the funds is committed to the discretion of the trustee, hence the court should let it remain where the testator put it. Moreover, the beneficiary is less liable to waste and dissipate the funds than if he had possession of them. It is further pointed out that this holding does not make the interest inalienable, for the beneficiary can alienate his interest and make it subject to his debts, though unable to dispose of the fund itself. For these reasons such trusts are not contrary to public policy and rules of positive law, and the court should see that the desires and wishes of testators should be carried out. The courts seem to think that such a restriction is not a fraud on creditors, because gifts and legacies of this character may be put on record and no person need be ignorant of how far the legatee's rights in the property extend. It is also said that the court is unwilling to admit such a limitation on the power of the testator to provide for the objects of his affection and generosity as this would imply. This reasoning as set out in *Nichols* v. *Eaton* is adopted and applied by the court in the principal case.

It would seem that if under the rule against perpetuities a man could suspend the ownership and alienation of an estate for a life or lives in being and twenty-one years thereafter, it should not be contrary to any rule of law or public policy to allow the testator so to dispose of that which is his own, that the person intended to be benefited thereby may not be enabled to dissipate it and, though holding the equitable title, yet should not be able to control the bare legal estate for the time limited in the will, so long as that does not offend against the rule against perpetuities. The following states have upheld the validity of such trusts: *Wagner* v. *Wagner,* 244 Ill. 101, 91 N. E. 66; *Kimball* v. *Blanchard,* 101 Me. 383, 64 Atl. 645; *Lanius* v. *Fletcher,* 100 Tex. 550, 101 S. W. 1076; *Stier* v. *Nashville Trust Co.,* 85 C. C. A. 423, 158 Fed. 601; *Ballantine* v. *Ballantine,* 152 Fed. 775; *Bronson* v. *Thompson,* 77 Conn. 214, 58 Atl. 692; *Reulings* v. *Reulings,* 137 Ky. 637, 126 S. W. 151; *Rector* v. *Dalby,* 98 Mo. App. 189, 71 S. W. 1078; *Fisher* v. *Taylor,* 2 Rawle 22; *Smith* v. *Towers,* 69 Md. 77; *Houghton* v. *Tiffany,* 116 Md. 655, 82 Atl. 831.

L. P. L.